

Federal Employee Program Flow-Down Provisions Addendum

(Commercial)

The clauses of this Federal Employee Program Flow-Down Provisions Addendum (“Addendum”), are a part of and are applicable, as indicated, to the Agreement entered into by and between Customer (“Plan”) and Supplier or Independent Contractor (“Subcontractor”). In the event of any conflict or inconsistency between the terms of the Addendum and the terms of the Agreement, the terms of the Addendum shall apply, but only with respect to services related to the Federal Employee Program. Any term not defined herein shall have the meaning set forth in the Agreement. Notwithstanding the foregoing, for the purposes of this Addendum, all reference to “subcontract” shall refer to the Agreement.

The Agreement is for goods or services that are within the definition of a “commercial item” or “commercial service” at FAR § 2.101. The following Department of Labor (“DOL”), Federal Acquisition Regulation (“FAR”) and Federal Employees Health Benefits Acquisition Regulations (“FEHBAR”) clauses are incorporated by reference into the Agreement unless a parenthetical appearing after the clause citation otherwise limits its application. These clauses are given the same force and effect as if set forth in full text. “Plan” shall be substituted for “Government”, “Contracting Officer”, and “Contracting Officer”, and “Subcontractor” shall be substituted for “Contractor” and “Carrier”, where those terms appear in the clauses below.

Subcontractor acknowledges that it has read and understands each of the incorporated clauses below. The FEHBAR and DOL clauses, as well as the entire Code of Federal Regulations, are available in full text at www.gpo.gov/fdsys/browse/collectionCfr.action. The FAR and FEHBAR clauses are available in full text at www.acquisition.gov under either the “Federal Acquisition Regulation (FAR)” tab (which contains the most current FAR clauses) or the “Archives” tab (which contains prior versions) and from the Plan upon request. When using the electronic database, Subcontractor is advised to be certain that the date of the FAR or FEHBAR clause appearing in this Addendum matches the date of the FAR or FEHBAR clause read in the database. This is important because the subcontract may incorporate a version of the FAR or FEHBAR clause that is older than the version that appears under the “Federal Acquisition Regulation (FAR)” tab in the database or the current version of the Code of Federal Regulations. For example, assume this subcontract incorporates a 2005 FAR clause but the current (or last version issued by the Government) is dated 2007. The 2005 FAR clause will be found only under the “Archives” tab.

Subcontractor agrees to flow down all applicable DOL, FAR, FEHBAR, and FEP Contract clauses to any lower-tier subcontractors approved in writing by Plan.

Unless otherwise specified in the clauses listed below, in order to allow Plan sufficient time to perform its obligations under the clauses, whenever a clause requires action by Subcontractor within a particular time, that action shall be completed five (5) calendar days prior to the time identified in the clause, unless the clause requires action within five (5) calendar days or less, in

which event the action shall be completed (2) two calendar days prior to the time identified in the clause.

“Commercial item”/“commercial service” means —

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and- (i) Has been sold, leased, or licensed to the general public; or (ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for- (i) Modifications of a type customarily available in the commercial marketplace; or (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means, modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if- (i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services- (i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and (ii) “Market prices” means current prices that are established in the course of ordinary trade

between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors;

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

MANDATORY DOL CLAUSES

DOL Clause

Title

41 C.F.R.

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES.

60-741.5(a)

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

(This reference, including the bolded text that follows, must be incorporated into all FEP subcontracts where the work is performed within the United States and the FEP subcontract is valued over \$10,000 (including indefinite quantity contracts unless the Plan has reason to believe that annual costs for the contract will not exceed \$10,000)).

41 C.F.R.

EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS

60-300.5(a)

(March 24, 2014). **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.** (This reference, including the bolded text that follows, must be incorporated into all FEP subcontracts where the work is performed within the United States and the FEP subcontract is valued over \$100,000 (including indefinite quantity contracts unless the Plan has reason to believe that annual costs for the contract will not exceed \$100,000)).

MANDATORY FAR CLAUSES (48 C.F.R.)

<u>FAR Clause</u>	<u>TITLE</u>
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (April 2010) (Incorporated into subcontract if subcontract value exceeds \$5,000,000 and has a performance period in excess of 120 days.) Subcontractors shall provide written notice to the Plan of all disclosures of violations of the civil False Claims Act or of Federal criminal law. The Plan, in turn, must provide written notice to the Chief Washington Counsel for FEP. BCBSA will serve as the point of contact with the OPM OIG.
52.203-15	WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (June 2010) (Incorporated into Subcontracts funded under the Recovery Act.)
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (October 2014) (Incorporated into subcontract expected to exceed \$650,000 (or \$1,500,000 for construction of any public facility), Subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities—unless the acquisition is set aside or is to be accomplished under the 8(a) program.)
52.222-26	EQUAL OPPORTUNITY (March 2007) (Incorporated into subcontract unless subcontract is exempt from all requirements of Executive Order 11246 – see FAR 22.8097 for a list of exemptions.)
52.222-35	EQUAL OPPORTUNITY FOR VETERANS (July 2014) (Incorporated into subcontract if subcontract value equals or exceeds \$100,000 and neither Executive Order 11246 nor the Department of Labor rules provide an exemption.)
52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (July 2014) (Incorporated into subcontract if the subcontract value equals or exceeds \$15,000, and no DOL exemption applies.)
52.222-37	EMPLOYMENT REPORTS ON VETERANS (July 2014) (Incorporated into subcontract if FAR 52.222-35 is flowed down, the value of the subcontract equals or exceeds \$100,000, and Executive Order 11246 and DOL rules provide no exemption.)
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (December 2010) (Incorporated into every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order

13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.)

- 52.222-50 COMBATING TRAFFICKING IN PERSONS (February 2009) (Incorporated into subcontract with Alternate 1 if subcontract will be performed outside the United States.)
- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (August 2013) (Incorporated into any subcontract valued over \$3,000 (but excluding Subcontracts performed outside the United States or that are only for commercial services that are part of the purchase of a commercially available off-the-shelf item.)
- 52.225-26 CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (July 2013) (Incorporated into subcontract for non-DoD agency for performance in an area of combat operations or other significant military operations).
- 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (December 2013) (Incorporated into subcontract if Subcontractor is a small business concern).
- 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (October 2014) (Requires Subcontractor to include the listed FAR clauses in Subcontracts with commercial item/service vendors and to include the clause in any Subcontracts with lower-tier non-commercial item/service subcontractors.)
- 52.247-64 PREFERENCE FOR PRIVATELY OWNED US-FLAG COMMERCIAL VESSELS (February 2006) (Incorporated into subcontract for the acquisition of commercial items and where the subcontract is for ocean transportation services, construction services, or transported supplies Subcontractor is reselling or distributing without adding value or shipped in direct support of the U.S. military.)

MANDATORY FEHBAR CLAUSES (48 C.F.R.)

FEHBAR

Clause

TITLE

- 1652.222-70 NOTICE OF SIGNIFICANT EVENTS (July 2005) (Incorporated into subcontract or subcontract modification if the amount of the subcontract or modification to be charged to FEP will equal or exceed the TINA threshold and 25% of the total subcontract cost.)

MANDATORY FEP CONTRACT CLAUSES

CS 1039 PLAN PERFORMANCE – EXPERIENCE RATED FFS

Section 1.9(a), CONTRACTS, DETECTION OF FRAUD AND ABUSE (January 2015).
(Although this clause does not appear in CS 1039 as a mandatory flow-down, it nonetheless imposes obligations on Plans to provide annual reports on the costs and benefits of the Plan's fraud and abuse control program—including detection and elimination of fraud and abuse by, among others, subcontractors. Thus we have included it under the mandatory flow-down clauses.) The change incorporates the January 2015 version of the clause (updated from January 2013), which updates the Fraud, Waste, and Abuse information reported annually by the Plans, which includes, among other things, information from subcontractors.